CF0000110160

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P.No. 814 OF 1990

Division Bench (Civil)

South Eastern Coalfields Ltd.
Through: Sub Area Manager,
Surakachar Colliery,
Distt.Bilaspur,M.P.

PETITIONER

5357

2-4-90

Versus

1. Sri Lakhram S/o. Dhansai
and 460 other workers,
Through:Sri Rambilas Sobhnath,
General Secretary,
Chhatisgarh Khadan Kharkhana
Mazdoor Union,Banki Mongra,
Distt.Bilaspur,M.P.

2. The Payment of Wages Authority
(Labour Court),Bilaspur.

3. The Appellate Authority under
Payment of Wages Act,
(Industrial Court of M.P.)
Raipur Bench,Raipur,M.P.

.. RESPONDENTS

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

43

HIGH COURT OF JUDICATURE AT BILASPUR :: CHHATTISGARH

M.P. No. 814 OF 1990

South Eastern Coal Fields Limited

Vs.

Shri Rambilas Sobhnath & Others

Present	:	Mr. P.S. Koshy, learned counsel for the petitioner. Ms. Sharmila Singhai, learned counsel for respondent No.1

O R D E R
(23rd June, 2005)

This petition is filed under Article 226/227 of the Constitution of India by South Eastern Coalfields Limited against the order dated 05.12.1989 of the Appellate Authority (i.e. Industrial Court) under the Payment of Wages Act, 1936 (hereinafter referred to as "the Act") passed in Appeal No.5 of 1988 upholding the finding / order dated 17.01.1989 passed by the Payment of Wages Authority Bilaspur (i.e. Labour Court) in Case No.65/PW Act/87.

2. The facts in brief are that the petitioner on the basis of agreement between the Management and representatives of Trade Unions dated 01.01.1985 and 25/26.01.1985 deducted one day salary of 21.01.1985 all the officers, staff and workers for the purpose of contribution to the Prime Minister's Relief Fund to be used for victims of Bhopal Gas Tragedy. The workers were allowed to work for the rest day on the payment of double wages, to compensate the rest day, the workers were given paid holiday on 26.01.1985. The respondent No.1 in the capacity of General Secretary, Chhattisgarh Khadan Kharkhana Mazdoor Union filed an application under Section 15(2) of the Act before the Payment of Wages Authority claiming the salary for the day i.e. 21.01.1985, which was deducted for the contribution to the Prime Minister's Relief Fund for the use of Bhopal Gas Tragedy victims. The petitioner filed its reply challenging the maintainability of the application. The Payment of Wages

Authority after perusing the records and considering arguments of both the parties, came to the conclusion that the deduction of the wages made for the day i.e. 21.01.1985 is not covered under the provisions of Section 7(2)(kk) & 7(2)(p) of the Act and as such the petitioner was directed to repay the wages to the respondent, for the day i.e. 21.01.1985 deducted under Section 7(2)(kk) & 7(2)(p) of the Act.

3. Being aggrieved, the petitioner filed an appeal before the Appellate Authority and the Appellate Authority upheld the finding and order passed by the Payment of Wages Authority.

4. Being aggrieved, the petitioner has filed this petition under Article 226/227 of the Constitution of India praying for setting aside the order dated 17.01.1989 passed by the Payment of Wages Authority and the order dated 05.12.1989 passed by the Appellate Authority, on the ground that both the judgments were perverse because they have not applied the provisions of the Act legally.

5. Mr. Koshy, learned counsel for the petitioner submitted that Section 7(2)(p)of the Act is very clear that the word "employed person" used in the provision is "person either himself/herself or through his / her representative unions" and as such this deduction for the Prime Minister's Relief Fund is permissible under Section 7(2)(p) of the Act. Section 7(2)(p) of the Act reads as under:

> "7. Deductions which may be made from wages.-
>
> (2) xxx xxx xxx xxx
>
> (p) deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify."

Learned counsel relies on **Balmer Lawrie Workers' Union, Bombay and another vs. Balmer Lawrie & Co. Ltd. and Others** reported in **AIR 1985 SC 311** wherein the Supreme Court in para 26 has held that a settlement

45

arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act.

6. Learned counsel for the petitioner further submits that the settlement in this case are duly signed by all the representatives representing the workers and the management and the settlement is binding on all the workers and as such written authorization of all the employed persons as provided in Section 7(2)(p) is applicable to the present case. He further submits that the Courts below have not applied the provisions of the Act properly and as such both the judgments and orders of Payment of Wages Authority as well as the Appellate Authority deserves to be quashed.

7. Ms. Sharmila Singhai, learned counsel appearing on behalf of respondent No.1 submits, in support of the judgments and orders passed by the Payment of Wages Authority and Appellate Authority, that the Courts below have rightly appreciated the provisions of Section 7(2)(p) of the Act holding the present case is not covered under Section 7(2)(kk) and Section 7(2)(p) of the Act. Section 7(2)(p) of the Act clearly mentions the written authorization of the employed persons, and it does not mean that the representative unions are authorised in absence of authorization of the employed person concerned and as such deduction made by the management was illegal and unauthorized.

8. Having considered the arguments of the learned counsel for the parties and perusing records of the case, I am of the view that this is a settled position of law that if authorization has been given by the representatives of the trade unions / associations representing the workers to deduct one day salary, there is substantial compliance of Section 7(2)(p) of the Act. The Hon'ble Supreme Court in **Balmer Lawrie Workers' Union, Bombay and another vs. Balmer Lawrie & Co. Ltd. and Others** (supra) has clearly held that a settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act. In

the present case, the deduction for contribution to the Prime Minister's Relief Fund is duly authorized on the basis of written authorization of the employed person as such it was legal deduction permissible in law.

9. In view of the foregoing discussion, the Payment of Wages Authority and the Appellate Authority have gone in error in holding that the deduction was unauthorized.

10. Pursuant to the order dated 17.01.1989 passed by the Payment of Wages Authority, confirmed by the Appellate Authority vide order dated 05.12.1989, the petitioner has deposited a sum of Rs.63,618/- before the Payment of Wages Authority in M.P.No.814 of 1990. Since the amount deposited is the wages of only one day and has been lying with the Payment of Wages Authority, the respondent is not entitled to take it back. The same may be given to the respondent workers. Learned counsel for the petitioner has not raised any serious objection, if the amount of wages for one day is paid to the workers who have been working for so many years with the petitioner.

11. The Payment of Wages Authority is directed to disburse the payment to all the workers within a period of one month.

12. This order for making payment to the workers may not be taken as precedent.

13. Accordingly, the petition is allowed to the above extent.

14. In view of the peculiar facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Satish K. Agnihotri
Judge

Sarma